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NOTES OF THE WEEK

Evidence of Children

If the unsworn evidence of a child of tender years is received under s. 38 of the Children and Young Persons Act, 1933, the accused may not be convicted unless such evidence is corroborated in a material particular implicating the accused. The unsworn evidence of other children cannot constitute such corroboration, *R.* v. *Manser* [1934] 25 Cr. App. Rep. 18. There is also a rule that the evidence of children, even when given on oath, should not be acted upon in the absence of corroboration, unless the jury has been warned of the danger of convicting in such circumstances.

An important judgment of the Court of Criminal Appeal was delivered by the Lord Chief Justice in *R.* v. *Campbell* (*The Times*, May 1), when an appeal against convictions of indecent assaults on boys was dismissed. Important principles were laid down which clarify the law for justices, who combine in themselves the functions of judge and jury.

Lord Goddard said, in the course of the judgment, that for present purposes child witnesses could be divided into two classes: those who were too young to be sworn and those who were capable in the court's opinion of understanding the obligations of an oath. He referred to s. 38, *supra*, and to *R.* v. *Manser*, *supra*.

In as much as the statute which permitted a child of tender years to give unsworn evidence, expressly provided for such evidence being given in any proceeding against any person for any offence, said the Lord Chief Justice, it appeared that the unsworn evidence of a child could be given to corroborate the evidence of another person on oath. A jury should be warned that such evidence had to be regarded with great care.

To sum up, the unsworn evidence of a child had to be corroborated by sworn evidence; if the only evidence implicating the accused was that of unsworn children the Judge had to stop the case.

The sworn evidence of a child did not need as a matter of law to be corroborated but a jury should be warned, not that they must find corroboration, but that there was a risk in acting on the uncorroborated evidence of young boys and girls, though they might do so if convinced the witness was telling the truth; and that warning should also be given where a young boy or girl was called to corroborate the evidence of another child, sworn or unsworn, or of an adult. The evidence of an unsworn child could amount to corroboration though a particularly careful warning should in that case be given.

Crown Privilege

The Bar Council have recently been examining various aspects of this issue and have now expressed recommendations.

The present law on the subject is contained in the case of *Duncan* v. *Cammell Laird & Co.* [1942] A.C. 624 in which Viscount Simon, L.C., laid down the governing principles:

(*a*) Documents otherwise relevant and liable to production must not be produced if the public interest requires that they should be withheld. This test is satisfied either by having regard to the contents of the particular document or by the fact that the document belongs to a class which, on grounds of public interest, must as a class be withheld from production, *e.g.*, departmental minutes; (*b*) The decision to object should be taken by the Minister who is the political head of the department; (*c*) The mere fact that the Minister or department does not wish the document to be produced is not an adequate justification for objecting to its production. Production should only be withheld when public interest would otherwise be damnified, *e.g.*, where the disclosure is injurious to national defence or good diplomatic relations or the practice of keeping a class of documents secret is necessary for the proper functioning of the public service; (*d*) An objection validly taken to production on the ground that it would be injurious to the public interest is conclusive. The court should not require to see the documents for the purpose of itself judging whether the disclosure would in fact be injurious to the public interest; (*e*) The above principles apply equally in suits between private citizens where in the course of those suits a government department is called upon to produce documents.

When considering principle (*c*), *supra*, it has been concluded that there are many matters of public interest which do not in any way affect the security of the State and noted that the Canadian courts have refused to be bound by the principles laid down in the *Cammell Laird* case. The American courts also tend to draw a distinction between a " secret of state " and " official information " only the first being privileged from disclosure.

The issue then arises as to whether when the Crown certifies that evidence should be withheld on some ground of public interest other than national security this should be conclusive. Lord Radcliffe in the case of *Glasgow Corporation* v. *Central Land Board* (*The Times*, December 13, 1955) has had some instructive comments to make on this matter:

" The interests of Government, for which the Minister should speak with full authority, do not exhaust the public interest. Another aspect of that interest is seen in the need that impartial justice should be done in the Courts of Law not least between citizen and Crown and that a litigant who has a case to maintain should not be deprived of the means of its proper presentation by anything less than a weighty public reason. It does not seem to me unreasonable to expect that the Court would be better qualified than the Minister to measure the importance of such principles in application to the particular case that is before it."

The Bar Council have been impressed by Lord Radcliffe's words and their recommendations have been shaped accordingly:

(1) A departmental head seeking the exclusion of any evidence should be required to state in his affidavit whether the adduction of such evidence would be prejudicial to the national security including diplomatic relations or some other head of public interest which he should specify.

(2) In either case the departmental head should be required to state whether the evidence would be so prejudicial when adduced in open or closed court.

(3) Where his claim to privilege is based on grounds of national security it should be conclusive.

(4) When his claim is based on grounds of public interest other than national security it *should* be examinable by the court.

(5) The court should be given power to order a hearing, a partial hearing in closed court on the ground that publication of any evidence to be given in the course of the proceedings would be prejudicial to the national safety or the national interest.

Appeal a Re-hearing

As an appeal to quarter sessions constitutes a re-hearing, it is open to the parties to call evidence additional to that which was before the magistrates' court. It is not uncommon for the appeal court to state, when allowing an appeal, that they are not criticizing the magistrates, who might have come to a different decision if they had had the advantage of hearing all the evidence that was called at the hearing of the appeal.

At Newcastle recently a sentence of imprisonment passed on a man for assaulting a policewoman was reduced to a fine. The learned recorder pointed out that evidence had been given, which was not called at the magistrates' court, to the effect that the appellant was an epileptic, and might have committed the assault when he did not altogether know what he was doing. The brief newspaper report does not state why the evidence was not available at the original hearing, but at all events it was not too late when it was forthcoming.

A Fly in the Milk

A small piece of metal or string in some article of food may justify a prosecution for a sale to the prejudice of the purchaser as being extraneous matter, but to justify a conviction for selling food unfit for human consumption it is necessary to prove that the whole article is or might become unsound by infection of some kind. The case of *J. Miller, Ltd.* v. *Battersea Borough Council* [1955] 3 All E.R. 279; 119 J.P. 569, dealt with metal in a bun. A case of a piece of used and dirty bandage in a loaf of bread which resulted in a conviction for selling unsound food, the conviction being upheld by the Divisional Court, is referred to at p. 80, *ante*.

A house fly is a very small extraneous body, but when it is found in a bottle of milk becomes important. In *Newton* v. *West Vale Creamery Co., Ltd.* (*The Times*, April 28), the prosecution was under s. 3 of the Food and Drugs Act, 1938, in respect of the sale to the prejudice of the purchaser of a bottle of milk in which a dead house fly was found floating. The justices dismissed the case and the prosecutor appealed. The Divisional Court allowed the appeal.

During the course of the argument the Lord Chief Justice suggested that in such a case the prosecution might proceed under either s. 3 or s. 9. In the course of his judgment he observed that house flies were carriers of disease.

For ss. 3 and 9 of the Act of 1938 we have now to refer to ss. 2 and 8 of the Act of 1955.

Appointment of Stipendiary Magistrate

Under s. 29 of the Justices of the Peace Act, 1949, no appointment (whether original or on a vacancy), of a stipendiary magistrate is to be made except on a petition made to the Secretary of State by the local authority or authorities concerned, and it sometimes happens that on the retirement or death of a stipendiary no successor is appointed. This must not be taken as any reflection on the stipendiary magistrate; it is more probable that the lay justices are able and anxious to do more work, and incidentally to make a small saving in public expenditure.

We notice in the report of the work of the justices for the county borough of East Ham a statement that for more than 18 months the court has been served entirely by lay magistrates, and that from general observations it would seem that the business of the court had been conducted very satisfactorily.

We believe East Ham, sharing with West Ham, used to have the services of the stipendiary two days a week.

We notice that the chairman Mr. R. J. L. Slater, sat on no fewer than 78 occasions in the adult court and 46 in the juvenile court.

" Conciliator-at-Law "

We announce with great regret the death at the age of 77 of Sir Charles Doughty, Q.C., a lawyer who had much success in industrial conciliation.

It is a curious paradox that from the ranks of those trained for combatant advocacy are drawn some of our most outstanding peacemakers in industrial disputes.

Sir Charles was educated at Rugby and Corpus Christi College, Oxford, where he graduated with Second Class honours in jurisprudence. Called to the bar by the Inner Temple in 1902 he rapidly acquired a practice in London and on the South-Eastern Circuit. By temperament he was admirably qualified to be a peacemaker and his gifts of patient and winning persuasiveness were to be of increasing use in industrial disputes. In 1915 he became official conciliator in these difficulties on behalf of both the Board of Trade and the Ministry of Labour. His duties in this direction increased steadily as the years

went by and he was called in by industries as various as cotton, sugar, confectionery, milk, trawling, furniture, and retail food.

For his public services of this kind he received the honour of knighthood in 1941. In the meantime his legal career had also been developing steadily and he had taken silk in 1925. He was appointed Recorder of Canterbury (1925), subsequently being translated to Guildford (1937) and Brighton (1939). In this latter appointment, he was succeeded in 1955 by his eldest son Mr. Charles Doughty, Q.C., M.P. for East Surrey, and this happy family combination also provided one of the very rare instances of a son taking silk during the lifetime of his Q.C. father.

Sir Charles Doughty will be greatly missed at the bar and by the Inner Temple of which he was treasurer soon after the war and where his courtly figure was appreciated by a wide circle of friends.

Brakes on a "bicycle made for two"

The Brakes on Pedal Cycles Regulations, 1954, which came into force on September 1, 1954, provide, in reg. 3, that "no person shall ride or cause or permit any cycle to be ridden on any road unless it complies with the provisions of these regulations."

The regulations then go on to specify what brakes are required and to provide that all such braking systems shall be efficient and shall be kept in proper working order.

We refer to the matter because of a report in the *Daily Express* that the police at Northwich, Cheshire, stated in a recent case that both riders on a tandem cycle are responsible for the condition of the brakes, although only the rider in front can control them. We think this must be so. The "back seat driver" on a tandem bicycle is clearly riding that cycle although his control over it is less than that of the man in front. From the point of view of self interest the man at the back is just as concerned as the front man to see that the brakes are in proper order, and there is no hardship in making them both equally liable in law. If, therefore, any of our readers is invited to have a lift on a tandem (as has happened, we believe, during transport strikes) we advise him to make sure that the brakes are in good order before he accepts the offer.

"L" Drivers who bought "full" licences

It used to be said, before the many wartime controls were abolished, that the people who would be most sorry to see them go would be the "spivs" who profited by acquiring rationed goods, legally or illegally, and then selling them at exorbitant prices to anyone who was prepared to buy, at such prices, more than his fair share. The controls necessary during the war made the black market notorious, but any control which prevents people from doing what they would like to is a temptation to dishonest people who can devise some means of defeating the control to their own financial advantage. The latest example is the sale of full driving licences to "learners" who had either failed to pass a test or had not bothered to try to pass. There was a conspiracy between a clerk in the licence department of the London county council and other people by which, for an appropriate "fee," the clerk arranged for the issue of licences to persons who had not passed any test. It was stated in reports of this case, which was tried at the Central Criminal Court, that the issue of 13 illegal licences had been traced and that for three months officials of the London county council had been engaged in searching through 185,000 driving licence records and 40,000 certificates of competence to drive in order to find the necessary evidence.

The conspiracy centred, of course, round the L.C.C. clerk, and he was sentenced to 21 months' imprisonment. Three fellow conspirators were sentenced to imprisonment for lesser terms. When such a conspiracy is uncovered courts cannot take any other than a serious view of the offences committed and it is to be hoped that the sentences imposed in this case will discourage other people from trying in this way to evade the requirements of the law which seek to prevent drivers who are not properly qualified from adding to the perils of our roads.

The Wandering Dog

Accident statistics show clearly that many road accidents are due to the presence on our roads of dogs which are "wandering at large" and which move and dart about, in a way impossible to predict, in the midst of the traffic. It has been said more than once that the only safe dog on our roads today is one on a lead. We read in the press, with much interest, about a proposal by the Minister of Transport to introduce into the present Road Traffic Bill a clause requiring that on certain designated roads it shall be an offence to "cause or permit a dog to be on such a road without the dog being held on a lead." Our attitude to a proposed new restriction is broadly (*a*) will it achieve a useful purpose and is it necessary and (*b*) can it be effectively enforced? If it cannot be effectively enforced it is difficult to argue in favour of its introduction.

At present we have no details of what the proposed new restriction is intended to do. Clearly it can cover the case of the man who takes his dog for its evening walk and does not put it on a lead in a designated road. But what of the dog which being off the lead far from a designated road becomes attracted by the presence of a member of the opposite sex and follows it with intense devotion until eventually they both emerge on to a designated road. Is such a dog owner causing or permitting within the meaning of the new provision? If so it might be better to go the whole hog and to make it an offence to take a dog out without a lead other than in certain excepted rural areas. At least then it would be clear what the dog owner's liability and responsibility were.

We refrain from further discussion of the point now because we may be beating the air, but we shall continue to watch the progress of this new clause in order to see its final form if it survives and becomes a section in the new Act.

Learning in the Dark

What seems to us to be quite a good point, which had certainly not occurred to us before, was made by the Nottinghamshire Road Safety Committee. According to a report in the *News Chronicle* it was suggested by the committee that driving tests should be conducted after dark as well as during the hours of daylight. It was reported that Nottinghamshire county council was told that in three months 203 out of 367 road accidents happened during darkness.

Most drivers will agree, we think, that driving at night presents problems which do not have to be dealt with in daylight. Most driving instruction, we are informed, takes place during the daytime, but a "learner" who, after daylight instruction, passes a test conducted in daylight becomes authorized to drive by himself at night. It may be that driving instructors do try to deal with the problem of night driving, but there is no real substitute for experience in this matter, and a learner who has just passed his test and who then drives, alone, for the first time at night may well find himself in difficulties.

The *News Chronicle* report states that the North Midlands Accident Prevention Federation is to be urged to take up with the Ministry of Transport this question of driving tests after dark. It will be

interesting to see whether they do so and, if so, whether anything positive results from their representations on the matter.

Shock Tactics

It is generally agreed that the best hope of reducing the number of road accidents is to be found in persuading *all* road users to play their part by behaving with every consideration and courtesy at all times. They are more likely to try to do this if they have a real appreciation of the gravity of the present position, and there have been many publicity campaigns the object of which has been to increase that appreciation. What sort of publicity is most likely to be successful? We read of a shopkeeper who had his own ideas on the subject. Recently, outside his shop, a motor cyclist and a 70 year old pedestrian were killed in an accident. He took some photographs to help the police and later displayed these photographs in his shop window. We gather that they must have been somewhat gruesome pictures, and his object in displaying them was clearly to shock people into realizing how dreadful it is that such accidents are happening so frequently. He removed the pictures later after people had commented that it was "disgusting" and "disgraceful" that they should be displayed, but he is reported as saying that in his view people who so objected were guilty of muddled thinking.

This is a somewhat controversial question, but on the whole we should have thought that more good than harm would be likely to result from giving people the chance to see, and to ponder upon, the appalling results of an accident that had happened outside that very shop. It is always being said that "something must be done" about the dreadful loss of life on the roads, and the shopkeeper in question appears only to have been trying to do his share to make people more conscious of the urgency of the matter.

Starting on the Amber

If drivers keep a proper look-out and behave reasonably it should be impossible for collisions to occur at cross-roads controlled by traffic lights. The reason why they do occur is mainly that the oncoming driver who sees green turn to amber will try to beat the red by accelerating over the crossing, and his opposite number who sees red change to amber and red will not wait for the green. Thus the two meet in the middle of the crossing.

We are interested, therefore, in the proposal which, according to reports in the press, is to be tried out at Leicester. The amber following green is to be retained, but for the other phase of the lights red will change direct to green with no intervening amber and red. We can see no objection to this and it must make for greater safety, unless it is argued that it will encourage those who try to "beat the red" by assuring them that the cross traffic will not start until the red is showing. We sincerely hope that the experiment does not provide any support for this argument. A traffic light should always be a warning of the existence of a crossing that needs to be approached with caution, and we have no sympathy for the driver whose instinctive reaction to the amber light is to accelerate and not to brake. The courts could do something to discourage this bad habit. Failing to comply with the indication given by a traffic sign is an offence in connexion with the driving of a vehicle, and disqualification is one of the possible "penalties" which can be imposed in appropriate cases.

Trust

Someone has said that it is better to trust and be deceived than to suspect and be mistaken. Everyone who is engaged in work among prisoners, probationers and others who have broken the law knows that risks must be taken by showing faith in some who are not unlikely to make a poor return. There must be many disappointments, but there will also be more than a few encouragements when trust imposed is rewarded by fidelity.

Addressing a Discharged Prisoners Aid Society, Mr. W. W. Llewellin related an incident that strikingly illustrates the happy results of trusting someone who cannot have expected to be trusted. It happened when he was a house-master in a borstal institution. News was received that the mother of the worst lad in the institution was dying. After much thought the governor decided to allow the lad to go home on parole for three days. On the third day anxiety was felt about his return, but he turned up. Later on it was learned that his mother, who died two days after her son left her to go back to borstal, had begged him to stay with her, but he had answered that he had been trusted to go back at the end of his three days, and he must keep his word.

That trust in him had proved to be a turning-point, and from that time, now nearly 30 years ago, the lad had never looked back, and he was still in correspondence with Mr. Llewellin.

Borstal stories of the "boy makes good" type are fortunately by no means uncommon. This one is, however, outstanding enough to be put on record.

A Letter to the Defendant

During the hearing of a case under the Food and Drugs Act, in which the defendant pleaded not guilty, the defending solicitor referred to a letter addressed by the local authority to the defendant and, as reported, described the letter as highly improper. The chairman, according to the same report, agreed that in the circumstances the letter was improper and should not have been sent. It was stated that the letter inquired whether the defendant intended to stand by an explanation he had given so that the local authority would know what witnesses to call.

As we do not know the exact form of the inquiry we are not in a position to criticize it, but we can be sure that the motive behind it was to save trouble and the expenses of witnesses if it was the intention of the defendant not to contest the case after all. Generally, it is no doubt unusual and perhaps undesirable for a prosecutor to make inquiries of the defendant about his intentions. The matter is rather different if the solicitors on both sides choose to communicate with one another, as for example when the defending solicitor writes to inform the prosecuting solicitor that his client intends to plead guilty and that in consequence witnesses need not be brought to the court, and costs incurred.

Larceny and Abandoned Property

There is old authority for the statement that property that has been abandoned by the owner cannot be the subject of larceny. It is not capable of being stolen, because there is no owner. When a person is charged with stealing and puts forward the defence that he thought the property had been abandoned by the owner, a jury must be directed on this issue, and it follows that justices must direct their minds to it, since if the defendant really believed that ownership had been abandoned he is not guilty.

A man was recently convicted at Arundel on a charge of stealing apple trees, after putting forward the defence of abandonment, counsel having quoted the law on the subject. According to the evidence, the owner of the trees had moved from his house and intended to return another day for his trees, but the next day they were gone. After the owner

and a constable had seen one of the trees, or one like it, in the defendant's garden, the defendant called on the owner, apologized, returned the three trees, and said he thought the owner had abandoned them. In court he said the same, adding that it was a common practice.

The magistrates evidently did not accept this explanation, and they imposed a fine. Clearly, the owner had not abandoned ownership, and the question was whether the defendant genuinely believed he had.

Medical Ethics

Since the beginning of broadcasting the British Medical Association has been strenuously opposed to medical practitioners participating in radio programmes other than anonymously. The same principle has been applied to television programmes. The doctor, like the barrister who of course also must not advertise himself in this way, can however sometimes be recognized by his voice and still more by his appearance in television programmes particularly if he is a well-known national personality. Perhaps in their case, however, disclosure is not so important, as what the association has chiefly in mind is the risk of a member of the profession profiting in his practice by broadcasting. Not surprisingly this view has not received unanimous support from those members of the profession who participate in radio programmes. Some eminent practitioners have in fact permitted the use of their names in circumstances that leave no doubt that the decision to ignore the association's policy had been taken deliberately. Sometimes the B.B.C. has expressed the view that it is desirable for medical broadcasters to allow their names and appointments to be announced to assure the public of the validity of their contributions.

It is an anomaly that a publication on a medical subject in the lay press or in books or magazines specially designed for the lay public may carry the name of the author whereas a doctor broadcasting on the same subject must remain anonymous. The council of the B.M.A. is, however, adamant that the present embargo should continue even in its application to doctors holding public appointments such as whole-time officers of health. It has been suggested that he is the one medical man who could without offence broadcast in his own name. The public health committee of the association considers however, that a medical officer who established a reputation as a successful broadcaster under his own name would by this publicity gain an unfair professional advantage over his colleagues in competition for public appointments made by lay health authorities. This seems to assume that the majority of those concerned would be likely to apply for other appointments whereas it would seem more probable that the majority would already have reached their final position in the public service. It is agreed that there can be no objection to a doctor broadcasting in his own name on a subject unrelated to his professional work. Apparently however, a medical officer of health who speaks on the air about some particular activity of his department, which would be of little value unless it was known who was speaking, is still not excepted. Is not this going rather too far?

CROSS-EXAMINATION WHERE DEFENDANTS SEPARATELY CHARGED ARE TRIED TOGETHER

It is proposed to consider in this article whether cross-examination should be allowed of one defendant and his witnesses by the other defendant where both defendants are being tried together on separate charges. The trial together of defendants on separate charges is quite common, *e.g.*, the drivers of two cars which have been in collision are often both charged with careless driving and tried together by consent, a course which has the approval of the Divisional Court (*see* p. 38, *ante*). Or a servant charged with using a motor vehicle and his master charged with permitting such use can properly be tried together by consent (*Taylor's Central Garages (Exeter) Ltd.* v. *Roper* (1951) 115 J.P. 445).

Mr. F. G. Hails in an article at p. 38, *ante*, cites opinions against allowing the one defendant to cross-examine the other or his witnesses and he also cites opinions in favour of allowing it at 103 J.P.N. 418 and 106 J.P.N. 515. It will be submitted that the two latter opinions are correct.

There is no decision of the High Court precisely on this point in a criminal matter but there are several civil cases of persuasive authority. The first is *Lord* v. *Colvin* (1855) 24 L.J.Ch. 517, in which it was held that a defendant may cross-examine another defendant's witness. In *Allen* v. *Allen* [1894] P. 248 it was held that it was not right to deal with the evidence of a respondent as admissible against a co-respondent and *vice versa* without an opportunity being afforded of testing its truthfulness by cross-examination. These two cases are cited in 13 *Halsbury*, 2nd edn., p. 757, as the authority for the following proposition (save the last part):

> "A defendant may cross-examine his co-defendant who gives evidence, or any of his co-defendant's witnesses, if his co-defendant's interest is hostile to his own."

In *Phipson on Evidence*, 9th edn., p. 496, the proposition is stated thus:

> "A defendant may cross-examine a co-defendant or any other witness who has given evidence against him although no issue is joined between them."

The latter work cites a further case, *Dryden* v. *Surrey County Council and Stewart* [1936] 2 All E.R. 535. There, the plaintiff sued Dr. Stewart for negligence in failing to remove gauze from her body after he had operated upon her and also sued the council for the negligence of its nurses in failing to remove the gauze, failing to observe or report symptoms which subsequently developed and failing to take the plaintiff's temperature on the day of her discharge. Finlay, J., the trial Judge, said that the defendants were quite distinct and the causes of action against them were also quite distinct and arose largely out of different facts; he continued:

> ". . . the answers of the two defendants were different and it seemed to me that, in the circumstances, counsel for the one defendant was entitled to cross-examine the witnesses for the other, on the simple ground that they were not his witnesses. It would, I think, be intolerable in a case of this sort to have to decide as to each witness and each particular piece of evidence, whether it was in favour of or against the other defendant."

It is submitted that this decision is of strong persuasive authority in favour of allowing one defendant in a criminal case to cross-examine another tried along with him for another offence.

There is, as already stated, no criminal case dealing with this question but *R.* v. *Hadwen and Ingham* (1902) 66 J.P. 456, is most relevant. In that case two defendants were jointly indicted for offences under the Debtors Act, 1869, and conspiracy, and were tried together. As is well-known, persons jointly charged will be tried together, unless the court in its discretion directs that they be tried separately, and the verdict of the jury or decision of the magistrates will not be normally given until both defendants have completed their defences. Both Hadwen and Ingham gave evidence, each exculpating himself and throwing blame on the other. It was held that counsel for each defendant had the right to cross-examine the other in such circumstances and Lord Alverstone, C.J., quoted *R.* v. *Burditt and Others* (1855) 6 Cox C.C. 458, where counsel for one accused had been allowed to cross-examine a witness called for the other and giving evidence unfavourable to the first accused. Lord Alverstone said:

> " I think the reasoning of Jervis, L.C.J., affords assistance to us in the present case because he says: ' In this case the prisoner should certainly have been allowed to cross-examine and reply, because the witness called by Burditt gave evidence to criminate him, and that evidence became tacked, as it were, to the case for the prosecution.' He seems to recognize the fact that in criminal cases where evidence had once been given it would be difficult for the jury to keep the evidence given by witnesses for one prisoner or the other distinct in their minds . . . the reason why cross-examination should be allowed would be that in effect the prisoner had given evidence of which the prosecution could avail themselves. I think that on principle, and on the analogy of previous decisions the witness who so gives evidence becomes a witness who has given evidence against the other prisoner . . ."

That case, of course, related to defendants on joint charges, but it is submitted that the rule there laid down would apply equally where separate charges are being tried together, *e.g.*, two cases of careless driving against A and B respectively. If A gives evidence first and incriminates B, his evidence surely becomes " tacked, as it were, to the case for the prosecution " and evidence " of which the prosecution could avail themselves." Likewise, if the magistrates decide to hear, after A has finished, the evidence of B and his witnesses before deciding whether to convict either defendant, their evidence becomes tacked to the case for the prosecution against A. (It is submitted that there is no rule requiring the magistrates to convict or acquit the defendant who first completes his defence before hearing the other's defence; they might well feel that the two cases are so intermingled by reason of their being tried together that the interests of justice require that both defendants should be heard and fully cross-examined before a proper decision can be reached. *R.* v. *Chambers* (1939) 83 Sol. J. 439, deciding that justices should announce their decision in the first case before starting to hear the second where two defendants are being tried separately for careless driving, does not relate to an occasion where separate charges are heard together.)

In the absence of authority precisely on the point, the question can be considered in the light of what is fair and proper for all the parties to the case and the court itself. If A and B have consented to be tried together for careless driving, is it unfair to A, B, the prosecutor or the court if B is not allowed to cross-examine A and his witnesses? Obviously, A has no cause for complaint. Nor has the prosecutor, for, whatever A may have said unfavourable to the case for the prosecution against B, he (A) can be questioned by the prosecutor on this. If A has thrown blame on B, B obviously is unjustly treated if he is not allowed to test A's evidence by cross-examination. The court itself is deprived of the assistance which B's cross-examination of A would give it in considering whether A or B or both or neither is guilty; this is not, it is true, a serious loss because, if the cases had been tried separately, there would have been no such cross-examination anyhow (unless A had been called for the prosecution) but it at least shows that the court could be prejudiced in a minor way if B did not cross-examine A and his witnesses.

On the other hand, if B is permitted to cross-examine A and his witnesses, in what ways could this result in unfairness to the parties? A, certainly, is subjected to additional cross-examination but no question which he is asked by B could not equally have been asked by the prosecutor or by the court and, ideally, every question which would help in elucidating the truth should have been asked by the prosecutor or the court; B will not be allowed to ask or say anything inadmissible against A. It is submitted, therefore, that, since B (if he gives evidence) will be open to cross-examination in his turn by A, there is no unfairness to A in subjecting him to cross-examination by B as well as by the prosecutor. B himself obviously is not prejudiced by being permitted to cross-examine A. The prosecutor has already had the opportunity to question A, although, admittedly, he cannot be further cross-examined by the prosecutor in respect of anything which B's cross-examination may bring out; this, however, it is submitted, is a minor matter and is comparable anyhow to any advocate's inability, without leave, to question a witness on anything which the magistrates' own questions may have brought out just before he leaves the witness-box. The court is or should be assisted by B's cross-examination of A and his witnesses in weighing up the value to be attached to A's defence and so in arriving at a proper decision in the cases before them—and, after all, that is the object of the proceedings, not for A to have the chance to blame B or B to blame A.

If B is allowed to cross-examine A and his witnesses, then A should be allowed the like opportunity in relation to B and his witnesses and the above-mentioned considerations will apply in the same way.

Every year hundreds of defendants are tried jointly with other defendants and all are liable to be cross-examined by the other's advocate (*R.* v. *Hadwen and Ingham*, *supra*) but no-one suggests that this rule prejudices them or results in injustice. And one may with some confidence therefore argue that where separate charges are tried together, the procedure is so similar that no injustice is likely to result here either, if mutual cross-examination is allowed. If a defendant anticipates that he may suffer prejudice, he may insist at the outset on a separate trial.

Mr. Hails at p. 38, *ante*, argues in favour of separate trials where two defendants are charged with dangerous or careless driving under the same circumstances. Nothing in this article is intended as criticism of the arguments which he advances for his views; it may often be thought, however, that the trial together of two such separate charges may be a better way of arriving at the truth than separate trials where A is missing at B's trial and *vice versa*. If the mutual right of cross-examination prevents injustices to either defendant arising, as it is submitted it does, then other considerations arise, namely, the time of the magistrates and witnesses and whether trial together will be more likely to lead to a better decision. The fact that A may be able by superior advocacy to throw the blame on B should surely not be a matter with which the court should concern itself when deciding whether or not to try the defendants

jointly. For one thing, B may insist on separate trials anyhow and, if he chooses trial together, he should know what A may do. Again, if A and B were on a joint charge, it is most unlikely that separate trials would be granted merely because A was represented by a powerful advocate who might throw the blame on B. Lastly, though joint charges are common, the writer has never heard of an appeal on the ground that one defendant was legally represented or had a better advocate; the court itself should be able to weigh up the value of A's advocacy of B's guilt and, indeed, to restrain A from developing so much of a defence as consisted only of showing that B was guilty.

Granting that A and B are allowed mutual rights of cross-examination, should they be allowed to question each other and the witnesses at large or only to cross-examine where the other's evidence is unfavourable? It will have been noted that Finlay, J., in his remarks cited, *supra*, did not approve of having to decide whether each piece of evidence was in favour of, or against the other defendant and this suggests that A and B would be entitled to cross-examine generally. Probably this question is largely academic since the cross-examination will in fact usually be confined to matters unfavourable to the questioner's case and advocates presumably will heed the court's hint that cross-examination on other matters is unnecessary. G.S.W.

THE PEDESTRIANS' ASSOCIATION AND ROAD SAFETY

Every motorist is at times a pedestrian and he has the advantage, as a pedestrian, of being able to appreciate the difficulties which the driver has to face as well as those which make life hazardous, at times, for the pedestrian. Many pedestrians are not motorists and do not appear always to understand that the motorist has any difficulties to contend with. One result of this is a failure to realize that, with the best intentions in the world, there is a minimum distance within which a vehicle can be stopped, however carefully it is being driven.

We have our motoring associations and we have our pedestrians' association, each concerned primarily with protecting the interests of its members, and we always regret to see either appearing to treat road traffic problems as if they could nearly all be solved if only the pedestrian, or the motorist, as the case may be, would behave properly. Our view is very strongly that the essential requirement is better and more considerate behaviour all round. The motorist who tries to beat the amber light, or who starts off on the red and amber without waiting for the green, is a menace to other road users. The pedestrian who makes a last minute dash to cross just as the lights have changed, so that traffic is given the signal to move, is also a menace. He risks danger to himself as well as to others more than the motorist who offends in this way does, but that is no comfort to the drivers who have to contend with his antics.

We have read recently a report of comments made by Dr. A. L. Goodhart, president of the Pedestrians' Association, at a northern provincial conference at Durham of the Magistrates' Association, and we have read also a full report of his presidential address delivered at the annual meeting of the Pedestrians' Association on April 10. With much that he said it is impossible to disagree, but we look in vain for any suggestion that the pedestrian could do something to lessen the toll of the roads which Dr. Goodhart so rightly deplores.

At Durham he was commenting on the Ministry of Transport's figures in the yearly publication *Road Accidents: General Summary and Statistical Tables*. He is reported to have described them as "not merely completely valueless but a major handicap to any serious consideration concerning amendments in the law."

His major grievance seems to have been that, in his view, far too large a proportion of accidents in which pedestrians are involved is ascribed to the fault of the pedestrian. If he is correctly reported he seems to have implied, in the first instance, that the police are partly to blame for not taking as much trouble as they might to ascertain the true cause of any particular accident. The policeman, he stated, is seldom present when the accident occurs and must depend partly on statements made by interested parties. If, he said, the policeman decided that the driver was to blame then clearly he (the policeman) must collect sufficient evidence on which to base a prosecution. On the other hand, if he decides that it was the pedestrian's fault he need take no further action because the pedestrian cannot be prosecuted. Then follows the statement which seems to us to imply a doubt as to the genuineness of the policeman's conclusion: "Was it surprising that in five out of six cases the blame was placed on the pedestrian?" It is true that this was followed by an acknowledgment of the difficulties experienced by magistrates in determining, under the most favourable conditions, the cause of an accident and the comment: "How could a police-constable be asked to do this on the spur of the moment?" but the real sting in his observations seems to us to be the apparent suggestion that the policeman takes the easy way out because the pedestrian cannot be prosecuted and the policeman is spared, therefore, the trouble of collecting evidence. That a policeman might occasionally be so influenced is possible, but we have no reason to suppose that police officers in general act in this way.

To support his description of the publication as being valueless Dr. Goodhart quoted certain figures from it. In 1954, 200,000 road accidents gave rise to 240,000 casualties, of which 60,000 were pedestrians, *i.e.*, pedestrians were involved (injured would be more accurate) in only one out of every four accidents. Therefore, he continues, in nearly three out of four accidents a driver must be to blame. Nevertheless, table 41, he said, attributed blame to the pedestrian in 45,000 out of the 60,000 cases of pedestrian injury, the argument being, we assume, that if drivers were to blame for three out of four recorded accidents it cannot be true that, in those in which a pedestrian was injured, drivers were to blame for only one out of four accidents. He further supported this argument by quoting the figures for killed and seriously injured at police controlled crossings during 1954 (three and 33) compared with the corresponding figures at zebra crossings (80 and 785); but he did not give (maybe the figures were not available) the relative numbers of each kind of crossing, figures which are essential if the comparison is to be made, as we suggest it should to be of real value, between the numbers killed and injured per crossing (or per 100 crossings) of each type.

We do not contend for one moment that there is not a great deal of truth in what Dr. Goodhart said, but we could wish that he had expressed some appreciation of the other side of the picture, and we think that the Pedestrians' Association, acting in the interests of pedestrians, should be just as concerned with exhortations to "jaywalkers" as with complaints about dangerous drivers. There are great numbers of good drivers who do not merit censure.

The address to the Pedestrians' Association made a comparison between the public abhorrence of murder as a crime

and their comparative indifference to the killing of people on the roads. Dr. Goodhart referred to the trial of a young farm labourer for murder after he had strangled a girl in a fit of jealousy. He was convicted and hanged. At the same Assizes a young man of good position was tried for manslaughter after he had driven, having had a few drinks, at 50 miles an hour round a right angle corner thereby killing two women as he mounted the pavement. The jury found him guilty of dangerous driving and he was sentenced to six months' imprisonment and disqualified for driving for two years.

Dr. Goodhart complained that by punishing the one crime in a terrible and dramatic manner and treating the other with exceptional leniency the law is preventing people from realizing " how wicked it is to kill thousands as we now do every year by dangerous and drunken driving." Later he said " Why, for example, has the House of Lords by an overwhelming majority voted in favour of hanging for murder and opposed every attempt to strengthen the law against traffic offences."

He complained also that an undue distinction has been drawn between what are called intentional and unintentional crimes. " It is said that the murderer intends to kill, while the reckless or drunken driver does not intend to do so. But a man who drives at excessive speed knows that he is taking a risk, not only with his own life, which is his personal affair, but with the lives of others who use the road."

He pointed out that those who support capital punishment emphasize its value as a deterrent. Then he went on " No one has pointed out the obvious fact that if we hanged 15 dangerous or drunken drivers a year we would save certainly hundreds, and probably thousands, of lives a year." The comparison is an extravagant one, but it is possible to appreciate the point of Dr. Goodhart's argument.

He drew attention later to the fact that in 1954 4,200 persons were convicted of dangerous or reckless driving, and the average fine was £10. Moreover only one driver out of three was disqualified. Here we think that Dr. Goodhart was on much firmer ground. If a court convicts of dangerous driving it means, as we understand this offence, that there was a deliberately reckless or dangerous act. Such an offence does merit salutary punishment, and the deterrent effect of disqualification is not, in our view, sufficiently appreciated and made use of.

Dr. Goodhart next quoted figures showing that for 6,000 cases of driving a vehicle in a dangerous condition the average fine was £1 15*s*. He compared this with the £2 which the A.A. and the R.A.C. are said to have given as the cost of inspecting a vehicle. Therefore, he concludes, it is cheaper to be convicted of this offence than to have the vehicle inspected. This is fair comment provided that one bears in mind that an average fine for 6,000 cases does not give a true picture, in that it makes no allowance for the great variation which is possible in the nature of the defect or defects which would justify conviction, but some of which would merit only a small fine.

Another average he gives is that of £1 as the fine for 11,000 pedestrian crossing offences. Here again we are inclined to agree that the fines for this offence tend to be too small, and we think also that as it is clearly an offence in connexion with the driving of a motor vehicle disqualification should be a question for the court to consider in such cases. Zebra crossings lose all their value and become death traps unless they are used as the law intends. This calls primarily for consideration by motorists to give pedestrians a fair opportunity to cross; it needs also common sense and reasonableness on the part of pedestrians which can come, however, only from a feeling that the motorist is going to " play the game."

Dr. Goodhart made the point that penalties must be such that they command obedience to the law, and if the law is firm and just it can " educate the conscience of the community ". He complained that " in the case of murder the law still uses the barbaric punishment of hanging, but the enforcement of the law against those who endanger life on the roads is pitifully weak ". In his view it is time for the reasonable man (who, he said, has always been the hero of the English law) to consider this problem of punishment so as to ensure that the law will be properly respected and obeyed.

As we have frequently said we have no sympathy for the dangerous or the drunken driver, and we hope that courts will punish them adequately, but we cannot shut our eyes to the fact (which is apparent to anyone who watches at busy crossings when there are great numbers of pedestrians about) that pedestrians are at times bad offenders in contributing to the difficulties and dangers on the roads. Without bringing traffic to a standstill it is impossible to get anything like satisfactory conditions in busy cities and towns unless the pedestrian is prepared to do his share. That is why we dislike any attack on the problem which uses arguments tending to create bad feeling between different sections of road users and to assume that there must always be a conflict of interests between them. We do not want a cold war on the roads.

ADDITIONS TO COMMISSIONS

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Mrs. Edna Mary Crook, Sunrise, 69 Bidston Road, Oxton, Birkenhead.
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THE LOCAL AUTHORITY AS LANDLORD

(*Continued from p. 297, ante*)

(D) *Physical Training and Recreation Act*, 1937, *s.* 4. Under this section, a local authority (a term which here includes a parish) may let, at a nominal or any other rent, any lands held by them for the purposes of the section, to any person, club, society or organization, for "the purpose of gymnasiums, playing fields, holiday camps or camping sites, or for the purpose of centres for the use of clubs, societies or organizations having athletic, social or educational objects." No Ministerial consent is required, and there is no limit on the duration of the lease that may be granted.

It is this section which is most convenient for a lease of land to a football or similar club, but as mentioned above, the land must first have been appropriated for the purposes of the section.

(E) *Public Libraries Act*, 1892.

Under s. 12 (4) of this Act, a library authority may let any house, building (or part thereof), or land vested in them for the purposes of the Act (which includes museums and art galleries, etc.), for any term and without obtaining any consent. The authority must, however, apply the rents and profits for the purposes of the Act.

(F) *Housing Act*, 1936.

Under part V of the Housing Act, 1936, a local housing authority may lease land which they have acquired or appropriated for the purposes of that part, but only with the consent of the Minister†. The Minister has given a general consent in the case of leases for at least 99 years of houses to sitting tenants or persons in need of houses, provided the terms of the circular are complied with (*see* circular 64/52, dated August 26, 1952). In addition, the authority may grant leases for any term, and on such conditions as the Minister may approve‡, of housing land under s. 79 of the Act to any person, for the purpose of:

(i) erecting houses, or

(ii) laying out streets, or

(iii) providing factories, places of worship or recreation, or other works or buildings.

In the section as originally enacted, the authority were required to grant the lease at the best rent that could reasonably be obtained, but this requirement was deleted by s. 3 (1) of the Housing Act, 1952, it being left in practice to the Minister to ensure that the terms are reasonable.

If land has been acquired for the purposes of part III of the 1936 Act (clearance and re-development), as being land in or surrounded by, or adjoining a clearance area, the local authority may for the best rent that can reasonably be obtained, let the land (or sell it) subject to a condition that the buildings thereon shall be demolished forthwith; no Ministerial consent is necessary for any such lease, which may be of any duration (1936 Act, s. 30).

(G) *Allotments Acts.*

Apart from the powers given by these Acts to let allotments to tenants, the local allotments authority may lease allotments land for other purposes, if they are satisfied it is no longer required for allotments purposes, but only with the consent of the Minister: Small Holdings and Allotments Act, 1908, s. 32. Moreover, before the Minister may so give his consent, he must be satisfied that adequate provision will be made for allotment holders displaced, or that such provision is unnecessary or is not reasonably practicable: Allotments Act, 1925, s. 8.

Before the passing of the Agriculture Act, 1947, it was quite common practice for an allotments authority to lease allotments land to a local allotments association under s. 27 (6) of the Small Holdings and Allotments Act, 1908. However, this section has been repealed (apparently inadvertently) by the 1947 Act, and the power can therefore no longer be exercised.

(H) *National Parks and Access to the Countryside Act*, 1949, *s.* 104.

This section empowers the local planning authority, or a district council (*see* s. 99 (2)) to dispose of land acquired or appropriated by them for the purposes of the Act, either because the disposal is virtually included in the purposes for which the land was acquired or appropriated, or because the land is no longer required for the purpose for which it was acquired. Examples of the first type of case would include the letting in a national park of fishing rights, the letting of tenancies on a camping site, or the leasing of a café acquired under s. 12 of the Act. The consent of the Minister is needed for any such lease or other disposal, and the Minister may not give his consent to a sale or a lease for more than 99 years, unless he is satisfied that there are exceptional circumstances rendering such disposal expedient (s. 104 (6)).

(I) *Town and Country Planning Act*, 1944, *s.* 19 (as re-enacted in sch. 11 to the 1947 Act).

This is a power to dispose of land very similar in effect to s. 104 of the National Parks, etc., Act, 1949, but it is of course of wider application, the 1949 Act section being virtually confined to national parks and areas of natural beauty. This section of the 1944 Act empowers a local authority who have acquired land under s. 38 or s. 40 of the 1947 Act to dispose of that land (either by sale or lease, for any period) in order to secure the best use of the land or so as to secure the erection of buildings, etc., needed for the proper planning of the area. The consent of the Minister is necessary under this section also, and again it may not normally be given for leases for more than 99 years. This is the power which is being widely used to enable the re-development of the "blitzed" and "blighted" cities to be carried out as far as possible by private enterprise under local authority control (exercised as landlords), and it is also used for the purpose of developing new local authority industrial estates. The local authority operating this power will normally be the county borough or county district council, as they will be the local authority by whom land designated as being subject to compulsory acquisition in the local planning authority's development plan, was acquired compulsorily under s. 38 of the 1947 Act, or by agreement under s. 40, *ibid.*

Observations on Consents.

In cases where Ministerial consent is necessary by statute, it seems that any lease purported to be granted in the absence of such consent (which cannot, it is submitted, operate retrospectively), will be void; even the local authority themselves may plead that their own deed was void for this reason, as against their "tenant": *Canterbury Corporation* v. *Cooper*

†Weekly tenancies of council houses are of course permitted under s. 83 of the 1936 Act.

‡The District Valuer's report will have to be obtained in any such case.

(1909) 73 J.P. 225. Under an open contract to grant a lease, the lessee is not entitled to call for the title to the freehold (Law of Property Act, 1925, s. 44 (2)), but in view of the importance of the consent, it is suggested that it would be reasonable for a purchaser-lessee to stipulate for production of the instrument of consent and delivery of copies thereof, at his own expense (*see* the observations of the learned editor of *Emmet on Title*, 14th edn., vol. I, at p. 158). As the local authority are in the position of trustees for their ratepayers, however, it is suggested that they should not agree to undertake for the safe custody of the instrument of consent, and the document should certainly not be handed over to the lessee on completion of the lease. J.F.G.

(*To be continued*)

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Jenkins and Hodson, L.JJ., and Lloyd-Jacob, J.)

SOWERBY BRIDGE URBAN DISTRICT COUNCIL *v.* STOTT

April 12, 13, 1956

Water Rates—Demand from owner of small house—Deduction of discount—Recovery in county court.

APPEAL from Halifax county court.

The plaintiffs were water undertakers having special powers and duties given and imposed on them by a local Act of 1863 in which it was provided that rates and charges for the supply of water should be made, assessed, and levied according to the provisions of the Public Health Acts. Among other provisions s. 72 of the Waterworks Clauses Act, 1847, was incorporated into the local Act. That section provided that the owner of a dwelling-house of an annual value of less than £10 should be liable to pay water rates instead of the occupier. The plaintiffs demanded water rates from the defendant as owner of such dwelling-houses. The defendant paid the water rates less 10 *per cent.* discount to which he claimed to be entitled by virtue of s. 129 (2) of the Public Health Act, 1936, which, he submitted, impliedly repealed s. 72 of the Act of 1847. He further contended that the county court had no jurisdiction, because s. 38 (3) of the Water Act, 1945, was amended by the Local Government Act, 1948, s. 62 (1), which gave exclusive jurisdiction in all disputes concerning water rates to the county court and by s. 1 (3) (*e*) of the Lands Tribunal Act, 1949, all questions to be determined under s. 62 of the Act of 1948 by county courts were transferred to the Lands Tribunal.

Held, (i) s. 72 of the Waterworks Clauses Act, 1847, was different in scope from s. 129 (1) of the Public Health Act, 1936, and was not repealed by that Act, especially if regard was paid to the saving section, s. 328, of the Act of 1936, and, as the water rates against the defendant were claimed under s. 72 of the Act of 1847, they were not subject to the discount allowed to certain owners under s. 129 of the Act of 1936.

(ii) by s. 1 (3) (*e*) of the Lands Tribunal Act, 1949, the Lands Tribunal was substituted for the county court only in so far as disputes regarding the cutting off of supply under the proviso to s. 38 (3) of the Water Act, 1945, were concerned, and, therefore, the county court had jurisdiction to determine an action for the recovery of water rate, notwithstanding that there was a dispute regarding a discount for punctual payment.

Appeal allowed.

Counsel: *Scholefield* for the plaintiffs; *Frank Stockdale* for the defendant.

Solicitors: *Jaques & Co.*, for *Godfrey Rhodes & Evans*, Halifax; *David Garsed & Sons*, Elland, Halifax.

(Reported by F. Guttman, Esq., Barrister-at-Law).

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Jones and McNair, JJ.)

SPIRES *v.* SMITH

May 1, 1956

Road Traffic—Omnibus—Overcrowding—Conductor charged with permitting—Transport Charges, etc. (Miscellaneous Provisions), Act, 1954 (2 *and* 3 *Eliz.* 2, *c.* 64), *s.* 9 (2)—*Public Service Vehicles and Trolley Vehicles (Carrying Capacity) Regulations*, 1954 (*S.I.* 1954, *No.* 1612), *regs.* 3, 4.

CASE STATED by Huntingdon justices.

At Huntingdon magistrates' court an information was preferred by the respondent Smith charging the appellant, Robert Spires, an omnibus conductor, with failing to comply with reg. 4 of the Public Service Vehicles and Trolley Vehicles (Carrying Capacity) Regulations, 1954, in that he "permitted" a stage carriage to be used to carry passengers in excess of the maximum number permitted by the regulations, contrary to s. 9 (2) of the Transport Charges, etc. (Miscellaneous Provisions), Act, 1954.

The justices found that the appellant, who was employed by the Eastern Counties Omnibus Co., Ltd., was the conductor of a double-decker stage carriage which was on passenger service from Peterborough to Cambridge. At Alconbury, Huntington, the stage carriage was carrying as standing passengers 15 adults and three children. The justices convicted the appellant and fined him £5. The appellant appealed.

Held, that the offence prohibited by the regulations was that of carrying an excessive number of passengers; that the carrying was done, not by the conductor or the driver, but by the owners of the vehicle; and that the appellant had not permitted any offence of carrying. The appeal must, therefore, be allowed.

Counsel: *F. H. Lawton*, for the appellant; *N. N. McKinnon* for the respondent.

Solicitors: *Gregory, Rowcliffe & Co.* for *Rigby, Williams & Co.*, Peterborough; *Treasury Solicitor.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Cassels and Donovan, JJ.)

R. *v.* CAMPBELL. *Ex parte* NOMIKOS

April 27, 1956

Shipping—Overloading—Timber overloaded in more places than one—One offence only—Plea of guilty to two informations—Certiorari refused—Timber Cargo Regulations, 1932 (*S.R. & O.*, 1932, *No.* 110), *reg.* 5 (*b*).

APPLICATION for *certiorari*.

Informations were preferred at Tower Bridge magistrate's court charging the applicant, Loucas John Nomikos, master of a vessel, with two offences under reg. 5 (6) of the Timber Cargo Regulations, 1932, by loading a cargo of timber to too great a height on two parts of the vessel. He pleaded guilty to both charges and was fined £500 and £250. He obtained leave to apply for an order of *certiorari* to quash the second conviction and sentence on the ground that one offence only had been committed.

Held, that in fact one offence only had been committed, but that *certiorari* did not lie as the magistrate had acted within her jurisdiction, the applicant having pleaded guilty to both charges.

Counsel: *Summerskill* for the appellant; *Rodger Winn* for the respondent.

Solicitors: *Richards, Butler & Co.*; *Treasury Solicitor.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NEWBERRY *v.* COHEN'S (SMOKED SALMON), LTD. NEWBERRY *v.* ADELSON

April 26, 1956

Sunday Trading—Sale of raw kipper—Sale of packet of tea—Whether meal or refreshment—Shops Act, 1950 (14 *Geo.* 6, *c.* 28), *s.* 47, *sch.* V.

CASE STATED by a metropolitan magistrate.

Informations were preferred at a metropolitan magistrate's court by the appellants, the London county council, against the respondents, who were shopkeepers, alleging contraventions of s. 47 of the Shops Act, 1950. In the first case the respondent company was charged with serving a customer with raw kippers on Sunday, September 11, 1955, and in the second case the respondent was charged with serving a customer with a quarter-pound packet of tea and a packet of matzo meal on the same Sunday.

By the Shops Act, 1950, s. 47: "Every shop shall, save as otherwise provided by this part of this Act, be closed for the serving of customers on Sunday: Provided that a shop may be open for the serving of customers on Sunday for the purposes of any transaction mentioned in sch. V to this Act." That schedule includes the sale of meals or refreshments whether or not for consumption at the shop at which they are sold, but not the sale of fried fish and chips at a fried fish and chip shop.

Held, that one test whether an article purchased constituted a meal or refreshment was whether it could be consumed equally well in the shop or at home, and that it was impossible to say that a raw kipper could not be a meal or refreshment, but that the packet of tea and the matzo flour could not be used for refreshment until they had been treated in some way. In the first case, therefore, the magistrate had

rightly dismissed the information, but in the second case the case must be sent back with an intimation that he had come to a wrong decision.

Counsel: *E. H. P. Wrightson* for the appellant in both cases; *Aron Owen* for the first respondent; *J. A. S. Hall* for the second respondent.

Solicitors: *J. G. Barr*; *Gale & Phelps*; *C. V. Young* and *Cowper & Whitton*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

CULLEY AND OTHERS *v.* HARRISON

April 25, 1956

Sunday Observance—Public entertainment—"Place"—Enclosure where motor cycle "scramble" held—Sunday Observance Act, 1780 (21 *Geo.* 3, *c.* 49), *s.* 1.

CASE STATED by Lancashire justices.

Informations were preferred at Leyland magistrates' court by the respondent, Harrison, against the appellants, Culley and others, who were the secretary, the clerk of the course, and two stewards of a "motor scramble" at Leyland, on August 7, 1955, for using a certain place, namely, Cuerden Park, for public entertainment, to wit, a "motor cycle scramble," to which persons were admitted by the payment of money, such day being the Lord's Day, called Sunday, whereby the said place was deemed to be a disorderly place, contrary to s. 1 of the Sunday Observance Act, 1780 and s. 1 (3) of the Common Informers Act, 1951. Informations were also preferred against the chief marshal and the official starter of the "scramble" charging them with aiding and abetting the offence.

The justices found, *inter alia*, that on August 7, 1955, a type of competition or race known as a "motor cycle scramble" was held at Cuerden Park, which was a public entertainment to which the public were admitted by the payment of money or by tickets sold for money. Cuerden Park was an extensive park consisting of many acres. At intervals along the road leading through the park officials were stationed to stop vehicles, and, after making the appropriate charge for parking, to direct the vehicles to the areas, consisting of many acres, used as parking places. The course on which the competitors rode was divided off by a wire and rope barrier, and admittance to the land adjoining the course was gained by the public by the purchase of tickets at seven spaces where tickets were sold, the charges for admittance being 1*s.* 6*d.* for each adult and 6*d.* for each child. Cuerden Park was admittedly a defined and definite area.

The justices were of the opinion that Cuerden Park was a "place" within the meaning of the Sunday Observance Act, 1780, and that the secretary, the clerk of the course, and the two stewards were either managing or conducting a public entertainment and that the chief marshal and official starter aided and abetted them to do so, and, accordingly, they convicted each of the appellants, fining the first four £50 and the other two £10 on each of four summonses.

By s. 1 of the Sunday Observance Act, 1780, "... any house, room, or other place which shall be opened or used for public entertainment or amusement, or for publicly debating ... upon any part of the Lord's Day called Sunday, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper of such house, room, or place shall" be liable to a fine.

Held, that the word "place" in s. 1 was not to be construed *ejusdem generis* with "house" or "room," but had a wider connotation and included the enclosure in the present case, and, therefore, the appeal must be dismissed.

Counsel: *Skelhorn, Q.C.* and *B. H. Gerrard* for the appellants; *Elwes, Q.C.* and *J. G. S. Hobson* for the respondent.

Solicitors: *A. J. A. Hanhart* for *A. S. Coupe, Lowe & Co.*, Rochdale; *Vizard, Oldham & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NEWTON *v.* WEST VALE CREAMERY CO. LTD.

April 27, 1956

Food and Drugs—Sale to prejudice of purchaser—Substance not of quality demanded—Dead fly in milk—Food and Drugs Act, 1938 (1 *and* 2 *Geo.* 6, *c.* 56), *s.* 3 (1).

CASE STATED by Lancashire justices.

An information was preferred at Morecambe and Heysham magistrate's court by the appellant, Geoffrey Newton, against the respondent company, the West Vale Creamery Co., Ltd., alleging that a retailer sold to the prejudice of the purchaser a one-pint bottle of milk which was not of the quality demanded by the purchaser, in that it contained a house-fly, contrary to s. 3 of the Food and Drugs Act, 1938. The appellant, being reasonably satisfied that the offence was due to the act or default of the West Vale Creamery Co., Ltd. and that the retailer could establish a defence under s. 83 (1) of the Act, proceeded directly against the company in accordance with s. 83 (3).

The justices found that the retailer, who received his supplies of pasteurized milk from the West Vale Creamery Co., Ltd., delivered to a customer six bottles of pasteurized milk with tinfoil caps, the caps being intact at the time. The milk was left on the doorstep in the usual manner. The six bottles were taken into the house and when one of them was opened it was found to contain floating near the top of the milk a dead house-fly. The justices were of the opinion that there was no sale to the prejudice of the purchaser as defined by s. 3 of the Food and Drugs Act, 1938, the purchaser having demanded milk and having been supplied with milk, and, according they dismissed the information. The appellant appealed.

Held, that the presence of a foreign body could make food not of the quality demanded within s. 3 of the Act of 1938, and that the case must be remitted to the magistrates with an intimation that the offence was proved.

Counsel: *E. H. P. Wrightson* for the appellant; *Newey* for the respondent.

Solicitors: *Gibson & Weldon*, for *R. Rose*, Morecambe and Heysham; *Wilberforce, Allen & Bryant* for *Gorton & Penhale*, Morecambe and Heysham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PERSONALIA

APPOINTMENTS

Mr. Ronald Sidney Bagshaw, LL.B. (Hons.), clerk and solicitor to Llantrisant and Llantwitfadre, Glam., rural district council, has been appointed to succeed Mr. R. S. Rainford, who recently resigned for health reasons from his post of clerk to Exmouth, Devon, urban district council. Mr. Bagshaw will take up his new post in August. He is 36 years of age. Mr. Bagshaw became assistant solicitor to Hornchurch, Essex, urban district council in 1946, and subsequently held posts with local authorities at Hendon, Middx., and Watford, Herts.

Mr. S. G. Deeming, treasurer of Bedworth, Warwicks., urban district council, has been appointed clerk to the council in succession to Mr. R. E. Huband.

Mr. R. M. Hughes, assistant solicitor in the town clerk's department of Bexley, Kent, borough council, has been appointed an assistant solicitor with West Bromwich county borough council. Mr. G. C. Grant has been appointed to fill the vacancy caused by Mr. Hughes' departure.

Mr. Ronald E. Smith, B.A. (Oxon.) has been appointed assistant solicitor in the town clerk's department of Wolverhampton corporation, following the departure of Mr. D. J. Grundy to take up his appointment as senior assistant solicitor with Burnley, Lancs., corporation.

Mr. Robert Walmsley, LL.B. (Lond.), L.A.M.T.P.I., has been appointed assistant solicitor to Dorking, Surrey, urban district council and will commence duty on May 28, next. Mr. Walmsley is at present assistant solicitor with Harlow Development Corporation. The position of assistant solicitor with Dorking urban district council is a new post.

Miss June M. Brett has been appointed to the position of second assistant solicitor to Dudley county borough. Miss Brett holds the degrees of M.A. (Edin.) and LL.B. (Hons.), Birmingham, and was admitted as a solicitor on November 1, last. Since qualifying, Miss Brett has held the position of assistant solicitor with Messrs. Duggan, Elton and James, solicitors, of Birmingham. She leaves this firm to take up her appointment at Dudley on June 1, next.

Miss Stella M. Devine, a serving officer with Liverpool city probation committee, has been appointed a probation officer in the Lancs. (No. 11) combined area. She will be stationed at Prescot and will take up her new duties on June 1, next. Miss Devine replaces Miss Janet Z. Hawkins, who has resigned to take up another similar appointment at Hemel Hempstead, Herts.

Miss Mary McPherson has been appointed a probation officer in the Worcestershire combined probation area and took up her duties on May 1. Miss McPherson had just completed her training as a probation officer and is attached to the Halesowen and Oldbury divisions. She succeeds Miss Joan Archer.

Mr. Gilbert Hair, governor of Strangeways Gaol, Manchester, is to succeed Major B. D. Grew as governor of Wormwood Scrubbs, London. Major Grew is retiring. It is expected that Mr. Hair will take up his new appointment during the summer. He will be returning to the prison at which he was deputy-governor 20 years ago. Mr. Hair will be succeeded at Strangeways by Mr. J. R. G. Bantock, at present governor of Birmingham prison. Mr. Bantock's successor, is Mr. H. Kenyon, aged 57, who is returning from a Nuffield travelling scholarship in Scandinavia. Mr. Bantock, who is 57, has been deputy governor of Pentonville, Parkhurst and Wakefield prisons, and governor of Leicester, Brixton and Stafford prisons. Mr. Kenyon has held appointments at borstal institutions and is a former governor of Birmingham prison.

Mr. F. M. Collins has been appointed senior official receiver in the Companies (Winding-up) Department. Mr. G. F. Morris is now official receiver and Mr. H. C. Gill is now an assistant official receiver. In the Bankruptcy (High Court) Department, Mr. A. T. Cheek has been appointed an assistant official receiver. All these appointments, announced by the Board of Trade, took effect from May 1.

RETIREMENTS

Superintendent W. Blenkin has retired as head of Durham division constabulary.

Colonel Horatio Rawlings, chief constable of Derby, is to retire later in the year. Colonel Rawlings is 65. He started his career as a police-constable at Nottingham in 1920, after being a captain in the Army, and the next year secured the post of chief constable of Neath. Six years later he was picked out of 135 applicants for the post of chief constable of Derby. Colonel Rawlings served in both world wars and in 1941 was awarded the King's Police Medal.

Mr. R. D. Cameron, deputy rating officer, is to retire after 50 years' service with Leamington, Warwicks., corporation.

Mr. Henry Hacking, Worcester city treasurer since October, 1929, has stated that he wishes to retire next September.

OBITUARY

We announce with regret the death at the age of 81 of His Honour G. M. T. Hildyard, from 1928 to 1943 county court Judge of Circuit No. 18 comprising Nottinghamshire and Doncaster. The late Judge, who was educated at Eton and University College, Oxford, was called to the bar by Lincoln's Inn in 1899 after having gained an Inns of Court studentship. His Honour practised at the Chancery Bar and after taking silk in 1920 was appointed a Master in Lunacy in 1923. Subsequently in 1928 he accepted the less well paid post of county court Judge on Circuit No. 18 in order to be near a family estate which he had just inherited. Judge Hildyard was an able and a careful Judge. Between 1932 and 1947 he acted as Chairman of Nottinghamshire Quarter Sessions.

We announce with regret the death at the age of 76 of His Honour Thomas Richardson, O.B.E., who between 1927 and 1953 was county court Judge of Circuits Nos. 1 and 2 (Northumberland and Durham). The late Judge was the eldest son of Sir Thomas Richardson, M.P. for the Hartlepools, and was educated at Rossall School and Clare College, Cambridge, where he graduated with Honours in Law in 1903. He was called to the bar by the Middle Temple in 1905 and became Powell Prizeman. In 1913 he contested unsuccessfully the Houghton-le-Spring Division of County Durham in the Unionist interest. Judge Richardson practised on the north-eastern circuit and in 1927 succeeded Judge Kershaw on Circuit No. 2. He made a successful Judge, and, in addition, acted for many years as Chairman of Quarter Sessions for the Counties of Northumberland and Durham.

Mr. Charles John Barrington, clerk to Frome, Som., urban district council, has died in hospital. Mr. Barrington started his career with Chipping Sodbury, Glos., rural district council and for 15 years was deputy clerk at Clevedon, Som., before his appointment as clerk to Melksham, Wilts., urban district council in 1939. In 1944 he was appointed clerk to Frome council.

HONOUR

Sir Percy Cowley, who at the age of 70 is the Isle of Man's senior Judge, is to receive the freedom of Douglas.

MISCELLANEOUS INFORMATION

THE CITY OF OXFORD: CHIEF CONSTABLE'S REPORT FOR 1955

Presumably because of competition from local industries Oxford is unable to fill the rather large gap between its actual strength and its authorized establishment. At the end of 1955 the figures were 131 and 165 respectively. During the year the new recuits numbered 10, but the losses were 13. Far fewer applications (76) were received than in 1954 (133) and it is recorded that " very few have been received since the recent substantial rise in pay. With full employment young men do not appear to realize the opportunities which exist in the police service, and will not face such inconveniences as shift work, week-end and night duty." The shortage makes it hard to give adequate police cover, and the chief constable states that, in consequence, duties have to be changed more often than he likes.

We notice amongst the commendations one which illustrates the extraordinary idea of humour possessed by some people. The commendation is for the prompt action taken by the constable concerned when a man was stated to be in danger of drowning, but it is recorded that in fact " the incident appears to have been a cruel hoax."

The work of the special constables, who numbered 93, was very much appreciated, and they are commended also for the comradeship displayed. With the shortage of regular police the help of the specials must be most welcome.

One thousand six hundred complaints of crime were reduced, after investigation, to 1,253, an increase of six on the 1954 figure. There always seem, to the motorist, to be an inordinate number of bicycles in Oxford, and it is perhaps not surprising, therefore, to read that no fewer than 1,254 were reported as stolen during 1955. One thousand and eighteen were recovered. The chief constable observes that very little care is exercised by most cyclists to protect their machines, and they are thus responsible for the wasting of a good deal of police time that could be saved. Similarly with motor vehicles, of 156 reported stolen only 10 were locked before being left and in many cases the ignition key was left in the switch. One owner even left the log book and insurance certificate in the car when he went off to Scotland, thus giving a thief every opportunity to steal the car and to turn it into ready cash. In fact the car was later found minus spare wheel, battery and wireless set. One feels tempted to suggest that such an owner deserves to be charged with aiding and abetting the thief in his crime if that were possible.

Three thousand and sixty-three summary offences were dealt with by the justices, an increase of 255 on the 1954 figure. Driving offences

decreased from 545 to 423 and other motoring offences from 951 to 864, but there were 1,169 cautions for motoring offences. Driving, or being in charge of, motor vehicles while under the influence of drink was responsible for 11 charges compared with nine in 1954. There were 117 prosecutions for "no insurance" offences. The chief constable reminds motorists that this offence involves disqualification on conviction and stresses the need for making certain that a policy is in force and does cover the particular use to which the vehicle is put.

Street accidents increased from 595 in 1954 to 652 in 1955. Cyclists were concerned in 431 accidents and the report states "There is no doubt that many riders take great risks in the manner in which they weave amongst the motor traffic and for their own protection should exercise more care."

Oxford's traffic problems have been given a good deal of space in the press in recent months. The two-way system in the centre of the city has been restored and is stated considerably to have benefitted the flow of traffic. In the chief constable's view, based on his long experience, a road to ease the centre traffic is of first importance, but he expresses no view as to where this road should be sited. He adds that with such a road and the construction of the western portion of the outer by-pass the city's traffic problems should be solved.

THE COUNTIES OF LEICESTERSHIRE AND RUTLAND: CHIEF CONSTABLE'S REPORT FOR 1955

This is a very detailed report with which we cannot pretend to deal in full, we can only select from it, and leave the majority of it without comment.

During 1955 a special committee of the police authority made a detailed examination of the force, with specific terms of reference, and submitted a report, the major portion of which is to be considered at the authority's autumn meeting in 1956. It is believed that this was something "which, perhaps, has not been done quite in this way before in any county force."

In his comments on the introduction of the 44-hour week the chief constable refers to other reductions in police working days during the 16 years from 1939 to 1955 (increased leave, and the working of an eight-hour duty with meal period included, in place of two separate four-hour periods) and states that for every seven constables employed in county forces before the war eight are now needed to perform the same duty, and this would not suffice to allow the full application of the 44-hour week.

With the introduction of the 44-hour week and the improved scales of pay which became operative in December, 1955. The chief constable considers that "never since this country had full employment has the police service been in a stronger position to offer such immediately good prospects to new entrants. The opportunities in the service today are greater than they have ever been . . . early selection and promotion is, in my submission, the only sound way to produce the best senior officers."

He would like to see greater opportunities for temporary attachments from one force to another because an officer who has served in only one force can never have as broad an outlook and experience as one who has served in a number of forces.

He is not in entire agreement with a recent government suggestion that police motor patrols should be increased by substituting motor cycles for motor cars and by adding additional motor cycles. In his view although motor cycles have advantages in heavy traffic they have a bad effect on the health of men who ride them regularly. This seems to agree with the opinion of another chief constable who says that motor cycle patrols are a job for younger men, "for eight hours patroling on a motor cycle, day after day, is a test of stamina and fitness."

To assist in coping with the volume of clerical work there have been installed at headquarters, during the year, a statistics recording machine, an adding machine and an addressing machine, and the results have been very satisfactory.

Relations with the local joint branch board of the Police Federation are excellent. They are given an opportunity to give in this report a brief account of their activities, and we think there is a great deal of truth in the final paragraph: "we would like to express our appreciation to the chief constable, the assistant chief constable and the superintendents for the manner in which local representation is dealt with, *often preventing minor matters becoming important issues* (the italics are ours)."

Recorded crimes during 1955 numbered 2,391, of which 1,287 were detected. Six hundred and seventy-four persons were proceeded against for these offences. The 1954 figures were 2,083, 1,145 and 668 respectively. Of the 674 persons 218 were juveniles. One hundred and forty-six other juveniles were cautioned.

The number of persons prosecuted for non-indictable offences was 3,842, compared with 4,138 in 1954. Only 11, compared with 22 in 1954, were charged under s. 15 of the Road Traffic Act, 1930, and nine of these were convicted. The number of accidents recorded by the police increased from 4,124 in 1954 to 4,605 in 1955. Amongst the primary causes of accidents are given 654 due to motorists or cyclists misjudging clearance, distance or speed of other vehicles or objects and 633 due to dogs running into the road. Twenty-two of these latter cases resulted in personal injury to drivers of vehicles or their passengers. No normal driver will deliberately run into an animal, but the sudden darts and changes of direction of stray dogs are such that it is almost impossible to anticipate them and even a careful driver is sometimes faced with the choice of risking hitting the dog or risking a worse accident by colliding with some other vehicle or with some person. On modern roads the only safe dog is one on a lead, and dog-owners who love their pets should realize this.

CHESHIRE COMBINED PROBATION AREA REPORT

Today there is rarely any valid excuse for crime on the ground of unemployment or economic pressure. This is referred to in his annual report by Mr. G. E. Riley, principal probation officer for Cheshire, and he asks the pertinent question: "Can it be that economic security has brought with it moral flabbiness?" Mr. Riley has a good deal to say about this, and evidently he is uneasy about present attitudes and standards of conduct.

The report emphasizes the fact that probation is not by any means confined to juvenile offenders, as might be thought from the prominence given sometimes, by press and radio to probation in connexion with juvenile delinquency. In Cheshire it may be noted quarter sessions makes full use of probation; in 1955 there were 296 cases in the calendar, of these 65 were placed on probation.

Mr. Riley pleads for full use of the power to remand for enquiries after conviction, and points out the many advantages of such a course.

In 1954 the figures for juvenile offenders showed an appreciable drop; and 1955 showed no appreciable increase. Care or protection cases, however, increased from 39 to 63.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

LONDON BROTHELS

Mr. R. R. Stokes (Ipswich) asked the Secretary of State for the Home Department how many medical officers of health in the East End of London had informed the police of the location of brothels; how many such brothels had been reported by medical officers of health in the last 12 months; and what action had been taken.

The Under-Secretary of State for the Home Department, Mr. W. F. Deedes, replied that during the last 12 months ending March 31, last, the local authorities in East London reported to the police seven cases of suspected brothel keeping. The Secretary of State could not say whether the information originated from the medical officers of health. Observation was kept in all those cases, but in none was sufficient evidence found to justify proceedings.

Mr. Stokes then asked what direction were given to the metropolitan police with regard to action to be taken when the existence of brothels was reported.

Mr. Deedes replied that the police were instructed that it was their duty to keep watch on suspected brothels. If evidence that the law was being broken was obtained, a report was sent to the appropriate local authorities for them to consider prosecution. It was the duty of the police to prosecute, where there was sufficient evidence, if the local authorities did not.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, May 8

PENSIONS (INCREASE BILL)—read 3a.

HOUSE OF COMMONS

Monday, May 7

FAMILY ALLOWANCES AND NATIONAL INSURANCE BILL—read 1a.

LICENSING AIRPORTS BILL—read 3a.

Tuesday, May 8

WORKMEN'S COMPENSATION AND BENEFIT SUPPLEMENTATION BILL—read 1a.

Wednesday, May 9

FINANCE (NO. 2) BILL—read 2a.

Thursday, May 10

LOCAL GOVERNMENT ELECTIONS BILL—read 3a.

Friday, May 11

HOTEL PROPRIETORS (LIABILITIES AND RIGHTS) BILL—read 3a.

NATIONAL INSURANCE BILL—read 3a.

SOLICITORS (AMENDMENT) BILL—read 3a.

QUESTION TIME

The news that a nine year old boy has won a prize of 10,000 dollars for correctly answering an American television "quiz," in competition with adult candidates from all over the United States, need cause nobody surprise. Nor should it disturb anyone's equanimity to learn that the questions he successfully dealt with related to practice and procedure in the stocks and shares market, the arguments for and against certain types of investments, and the right moments to buy and unload one's holdings. Having regard to some of the mental pabulum which the young today absorb almost with their mothers' milk, an interest in high finance, before they have completed their first decade, is quite innocuous in comparison with the cult of mob-violence and the technique of secret assassination in which many of them become adepts in their early teens.

In a generation which has been trained to rely more upon the visual image than upon the spoken word, and on both rather than on the printed page, the critical faculty is at a discount. All but the most perfunctory of readers will take time to accept or reject—to taste and chew each phrase, to assimilate one and eliminate another—to compare the flavour of the various ingredients, and to form their likes and dislikes on selective grounds. But radio and television leave little time or opportunity for analysis; their impact is immediate, and their appeal is to the senses rather than the reason. The manner becomes more important than the matter; a persuasive voice, an attractive "get-up," have a greater influence with the hearer or the viewer than soundness of argument or originality of thought. Clever repartee makes a greater impression than wisdom; facts and figures weigh more than principles and ideas.

These things perhaps account for the prevalent popularity of sessions involving "snap" questions and answers—"brains trusts," "quizzes" and "general knowledge" tests. To the philosophical mind there are few questions of importance which are capable of solution by any human brain, however brilliant, on the spur of the moment; before the microphone, or in the glare of the arc-lamps, there is an almost irresistible temptation to play up to the gallery, with some snappy phrase or comic witticism, rather than to give a reasoned and thoughtful reply. As regards what is called "general knowledge," our experience is that it is invariably coloured by the individual interests or prejudices of those who frame the questions. What is regarded as "general" knowledge by a stockbroker, a professor of Greek, a farmer, a jockey and a B.B.C. commentator, will show wide variations.

The word "quiz," now so much used in this context, has had a curious history. Its origin is obscure, though some authorities would derive it from the Latin *quaeso*. In Regency times it was employed, in those circles among whom Jane Austen so observantly moved, to mean "to gaze fixedly" at a person, to make a careful examination of his features or expression; as a substantive it could refer to the person conducting such examination or to the eyeglass employed for the purpose. All these connotations are now practically obsolete, and the word is employed almost exclusively in connexion with the "snap" question-and-answer type of entertainment, which has taken the place of the now disused practice of asking riddles—50 or 60 years ago as inevitable an episode at parties as the sentimental ballad or recitation.

That there must be something in this kind of institution which appeals spontaneously to human nature is clear from its universality and antiquity. People have been asking one another riddles and conundrums, and "quizzing" one another, at social gatherings and elsewhere, all over the world for thousands of years. They took the matter pretty seriously, too. The *Book of Judges* records Samson's discovery of a swarm of bees which had made honey in the carcase of the lion he had killed—an episode which led him, at the ensuing feast, to put to his guests the riddle: "Out of the eater came forth meat, and out of the strong came forth sweetness." The stake on either side was "thirty sheets and thirty changes of garments." The Philistine guests, behind their host's back, prevailed upon his wife to worm the solution out of him, and then pretended they had guessed it: "What is sweeter than honey? and what is stronger than a lion?" Samson had some cause to be annoyed at their unsportsmanlike behaviour; but when "he went down to Ashkelon and slew 30 men of them, and took their spoil, and gave changes of garments unto them which expounded the riddle," he displayed a petulance and the lack of a sense of proportion which were equally reprehensible.

Greek legend tells of the Sphinx, which lurked on a height outside Thebes, and confronted unwary travellers with the enigma—"What is it that goes first on four legs, then on two, and finally on three?" Those who failed to give the right answer she strangled at once. It was Oedipus who offered the correct solution—"Man"—which so infuriated the Sphinx that she flung herself to death from the top of the precipice—another instance of sheer bad temper and inability to accept defeat in a proper sporting spirit.

Then there are innumerable stories, in the folklore of many nations, of the beautiful princess who will give her hand to the man who can solve her secret conundrum, while all who try and fail must be put to death. Giacomo Puccini used a Chinese version of the legend for his last opera, *Turandot*. And Richard Wagner, in the first act of *Siegfried*, portrays the god Wotan, in the guise of the Wanderer, engaging the cunning swordsmith, Mime, in a mutual "general knowledge quiz," the wager on each side being the other competitor's head. Wotan, not unnaturally, wins the unequal contest, but leaves Mime his head for the time being—"until it shall become forfeit to the youthful hero Siegfried, who knows not the meaning of fear."

This Wagnerian episode brings us back to our starting-point. Many of us would be apt to lose our heads in the examination room, or before the television camera, if we had, at an advanced age, to face such ordeals. It is the youthful hero, who has never experienced stage-fright, that has the best chance of success. That, perhaps, is what the young American financial wizard has in common with his forbear, the Scottish prodigy, James Crichton, commonly called "the Admirable Crichton" from that day to this. Born in 1560, he was sent at the age of 10 to St. Andrew's University, where he took his B.A. at 14 and his M.A. one year later. There is no record of his making a fortune on the Stock Exchange; but at Padua, at the age of 21, he held two disputations. In the first he extemporized a poem in Latin, and delivered an oration "in praise of ignorance." In the second he "refuted innumerable errors in Aristotelians, mathematicians and schoolmen, and undertook to conduct his argument either logically or by the secret doctrine of numbers." This (as the woman in the next seat to us in the cinema always says) is where we came in.

A.L.P.

BOOKS AND PAPERS RECEIVED

Child Adoption. The Journal of the Standing Conference of Societies Registered for Adoption. No. 18. Price 2*s.* 6*d.* Honorary Secretary, Mr. A. Rampton, Gort Lodge, Petersham, Surrey.

The Police College Magazine. Volume 4, number 2, spring 1956 Published by The Police College, Ryton-on-Dunsmore, Warwickshire.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Cinematograph Acts—*Interpretation of reg. 35 of the Cinematograph (Safety) Regulations, 1955 (S.I. 1955, No. 1129).*

Regulation 35 of part III of the Cinematograph (Safety) Regulations, 1955 (S.I. 1955, No. 1129), refers to premises which have not been used on more than three days in any week in the current calendar year. The regulations come into operation on January 1, 1956. An applicant for the renewal of a licence, which expires on December 31, 1955, of a cinema with more than 250 but less than 400 seats and used on more than three days in some weeks in the calendar year 1955 contends (*a*) that the word "current" in reg. 35 applies to the calendar year 1956, and (*b*) that, if he is wrong, it means any year prior to the year for which a licence is granted. If this contention is right, he will not use his licence at all during 1956 to avoid the commission of an offence, but will do so in 1957, as his premises will not have been used on more than three days in any week in 1956. Your comments will be appreciated.

NEMO.

Answer.

In our opinion, the expression "current calendar year," as used in reg. 35 of the Cinematograph (Safety) Regulations, 1955, refers to the period from January 1 to December 31, in which it is sought to take advantage of the modified requirements contained in part III of the regulations. We are against the applicant in both his contentions.

2.—Highway—*Overhanging sign—Damage by passing vehicle.*

We are acting in connexion with proceedings whereby a sky sign partly overhanging the highway was damaged by a passing vehicle. We should be glad if you could refer us to any authority for the minimum height of such signs above the carriageway, and also of any case in which the question of reasonable height has been considered. Can you also refer us to any regulations setting out the maximum height of loaded vehicles ?

JASHOR.

Answer

We can find no provision which fixes any general minimum height for signs. "Sky signs" are dealt with (outside London) by the Public Health Acts Amendment Act, 1907, part IX, but the definition (*see* s. 91 (3)) excludes signs . . . securely fixed to or on top of the wall or parapet of a building . . . We take it that the object you mention was outside this enactment, if in force. You may find it helpful, if only upon your point of reasonableness, to look also at the twelfth offence in s. 28 of the Town Police Clauses Act, 1947 (in force in all boroughs and urban districts), and at ss. 24 and 25 of the Public Health Act, 1925, if in force.

The Motor Vehicles (Construction and Use) Regulations, 1955, by reg. 7 restrict the height of a public service vehicle to 15 *ft.*, but contain no other provision about the height of vehicles or their loads.

3.—Justices' Clerks—*Accounts—Remitted fees book.*

The obligation on a justices clerk to keep a remitted fees book was formerly contained in s. 12 of the Criminal Justice Administration Act, 1851. This was amended by s. 46 (2) of, and sch. 7 to, the Justices of the Peace Act, 1949, and the section was repealed by sch. 6 to the Magistrates' Courts Act, 1952. Section 113 of the Magistrates' Courts Act, 1952, empowers the court to remit fees but does not continue the obligation on the clerk to keep a remitted fees book. Could you inform me whether there is still any obligation, statutory or otherwise, for the clerk to keep a remitted fees book ?

SINGO.

Answer.

We do not think there is now any obligation on a clerk to keep such a book.

4.—Landlord and Tenant—*Rent Restrictions Acts—Private street works charges.*

We have a client who is the owner of rent controlled dwelling-houses fronting a road which has been made up and taken over by the local authority. Our client as owner is called upon to pay substantial sums in respect of road charges. Can the owner serve a valid notice of increase of rent on each of the tenants, either under the Rent Restrictions Acts, 1920–39 or under the Housing Repairs and Rents Act, 1954, in respect of such road charges?

Reference is made to sch. 2, para. 7 of the latter Act. *Megarry* (8th edn., p. 335) gives the opinion that the cost of making up a road is not within the scope of the permitted increases under the former Acts.

P.C.T.J.

Answer.

Not, in our opinion, under Rent Restrictions Acts. We agree with the publication cited; under the Housing Repairs and Rents Act, 1954, the making up of the road is not a repair within s. 49 (1) and sch. 2, para. 7. It is an improvement.

5.—Licensing—*Premises to be demolished and other premises to be built on same site—Procedure.*

Certain premises (which have an enclosed bowling green to the immediate side and rear) have been fully licensed for many years. The premises are not described in the licence by metes and bounds but the bowling green can be said to be within the curtilage and it would appear that intoxicants have been served on the green in past years. It is proposed to rebuild the hotel on the site of the bowling green and to demolish the existing building when the new building is completed. No part of the old building will form part of the new building but the new building will be built entirely on the site of the bowling green.

Will you please say whether, in your opinion, the application to the licensing justices should be:

(*a*) for approval of proposed structural alterations under s. 134 of the 1953 Act. In this respect, my view is that the identity of the existing premises will be destroyed and that the new premises will not be within the ambit of the existing licence even though it may be argued that the new building will be built on land used in the past in connexion with the existing licence—*R.* v. *Weston-super-Mare Licensing JJ., ex parte Powell* [1939] 1 All E.R. 212; 103 J.P. 95, refers—or

(*b*) for a provisional ordinary removal under s. 27 of the 1953 Act. In this respect, it is believed that the Commissioners of Customs and Excise may raise no objection to any potential loss of monopoly value, or

(*c*) for a new licence.

O. SILVER.

Answer.

In our opinion, application should be made for a provisional grant of an ordinary removal.

The demolition of one set of premises and replacement by another set of premises cannot fairly be described as an "alteration to premises"—more truly it is an alteration to the landscape.

Application for a new licence is inappropriate because there is already a licence, and as no point is to be taken on the question of increased monopoly value the procedure under s. 7 of the Licensing Act, 1953, does not arise. In any event, the licensing justices could in their discretion prefer the ordinary removal procedure whereby there would be no question of monopoly value.

6.—Licensing—*Transfer of licence—Right of rating authority to object.*

My council received notices informing them that a transfer of a justices' licence for the sale of intoxicating liquor will be taking place in respect of certain licensed premises in the district. In the majority of these cases the general rate has not been paid. Would you please inform me if objection to the transfer can be made on these grounds ?

NITIF.

Answer.

The Licensing Act, 1953, sch. 3, part II, para. 1 requires, if the premises are in an urban parish, that notice of application for transfer of a licence shall be given to the clerk to the rating authority as such. From this it may be inferred that it is the intention of the law that the clerk to the rating authority may be placed in a position to inform the licensing justices on any matter relevant to the application.

From one point of view, the fact that an outgoing licence holder is a rate defaulter is a good reason for transferring the licence to some other person: from another, the fact that an occupier of licensed premises has defaulted in paying the rates on the premises is some evidence that profits have not been made in the house whereby it may be suggested that the house is not filling a substantial public need and that the licence is redundant.

It may be appropriate, in the case of an "old" on-licence, for the justices to consider their powers under s. 21 (7) of the Licensing Act, 1953.

7.—Magistrates—*Practice and procedure—Plea of guilty—Asking the accused if he wishes to question witnesses who have not been called.*

In my experience it is customary to ask a defendant, who is not represented and who pleads guilty, whether he wishes to put any

questions to any prosecution witnesses who are not called to give evidence. However, the chairman of this bench has expressed the view that this is not a usual practice and he objected to my giving such an opportunity to the accused, and I should be obliged for your views on the matter. It is plain that the bench can convict without hearing the witnesses when there is a plea of guilty. However, I have always taken the view that the accused should be given the opportunity to question the witnesses if he wants to, as his questions may indicate that he has some sort of defence and certainly a defending solicitor or barrister often does ask that a prosecution witness should go in the box so as to get from him some helpful evidence in mitigation. Is there any authority on the point or has there ever been any judical comment on it ? J. SACKOSE.

Answer.

We do not think it is usual to ask a defendant who has pleaded guilty if he wishes to question witnesses who have not been called to give evidence. He is normally asked if he wishes to question any witness called to speak about the facts of the case or about his character, and then he is asked what he wishes to say on his own behalf in explanation: or in mitigation of the offence to which he has pleaded guilty. If anything he then says suggests that any question could usefully be put, in his interest, to a prosecution witness that witness should be called and questioned either by the defendant or by the court on his behalf.

We know of no authority on this point, and the practice may well vary in different courts.

8.—Pedlars—*Trading by barter.*

A woman and a man go from door to door and leave at each house a paper carrier bag containing a packet of soap powder and bars of soap. On the carrier bag is the following notice" : To housewives. Wanted old woollens. Please fill this bag in exchange for contents. The bag will be called for in one hour. We also buy old rags. Thank you."

It would appear that under English law (*Druce* v. *Gabb* (1858) 22 J.P. 319) any person so bartering goods would be liable to conviction as an unlicensed pedlar. The question arises whether the person would be similarly liable under Manx law.

Section 4 of the Pedlars and Street Traders Act, 1906 (Isle of Man) reads: " No person shall act as a pedlar without such certificate as in this Act mentioned, and any person who acts as a pedlar without having obtained a certificate under this Act authorizing him so to act shall be liable, etc . . ."

In this Act: " ' Pedlar ' shall include hawker, petty chapman, tinker, caster of metals, mender of chairs, or other persons who, whether with any horse or other beast bearing or drawing burden, or on foot, travels or goes from town to town, or from place to place, or to other men's houses, carrying to sell, or exposing for sale, any goods, wares, or merchandise, or procuring orders for goods, wares or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft; and includes any person who travels, by any means of locomotion, to any place in which he does not usually reside or carry on business, and there sells, or exposes for sale, any goods, wares, or merchandise in or at any house, shop, room, booth, stall, or other place whatever hired or used by him for that purpose; but it shall not include any licensed auctioneer selling goods by auction, or any person selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein, and who buy to sell again, or any person selling fish, fruit, victuals, flowers, or newspapers, or any person selling, or exposing for sale, any goods, wares, or merchandise in any public market or fair legally established." TISLEOF.

Answer.

In our opinion a certificate is not necessary under the statute quoted. *Druce* v. *Gabb*, *supra*, was decided under the Vagrancy Act, 1824, s. 3, which refers to pedlars trading. So also the Pedlars Act, 1871, has the verb " trades " where the definition, *supra*, has the verb " goes." Seeing that that definition of a pedlar does not include the word trading, it is necessary to consider whether there is a sale or offer for sale. Generally, though there are exceptions, barter is not sale, 29 *Halsbury* (2nd edn.) 5, and we think therefore that the Manx statute does not require that there should be a certificate.

9.—Real Property—*Licensee holding over—National Assistance Act, 1948—Possession of temporary accommodation.*

The local authority provided temporary accommodation for a number of persons, under the provisions of s. 21 of the National Assistance Act, 1948, in rooms in a disused hospital, each family being accommodated in a separate room. The occupants provided their own furniture and signed a form of licence for the occupation of the rooms. Notices have been served upon the occupiers determining the licence, but they have not vacated their rooms, and it is expected that they would resist ejectment if the authority attempted to remove them and their furniture. If the local authority, notwithstanding this, proceeded to eject the occupants and their furniture (using no more force than was reasonably necessary), your opinion is requested whether the authority and their servants and agents would be liable to proceedings under the Statutes of Forceable Entry. If the answer is in the affirmative, in your opinion should the local authority protect themselves by obtaining an order in the county court for possession of the rooms ? A.J.M.

Answer.

We are not told precisely the terms of the licence, but we do not think the Statutes of Forcible Entry apply at all. At most, they only apply to the entry itself: if the council's officials (or a bailiff under the council's orders) obtain entry without force, they can put the occupants out, without risk under those statutes. This seems to us the best course, rather than to waste time and money upon proceedings in the county court, in which the local authority would probably fail to recover costs. *Compare Butcher* v. *Poole Corporation* [1942] 2 All E.R. 372.

10.—Road Traffic Acts—*Limited trade licence—Use for delivering a repaired caravan to one customer in the cause of* bona fide *journey to deliver a new car to another garage.*

A is a motor garage proprietor and a caravan dealer and repairer. A is delivering a new motor vehicle to another garage and attached to the new vehicle a caravan which he had repaired, and which he desired to deliver to the owner whose premises were between A's garage and the garage where he was proposing to deliver the new vehicle. Has A infringed the regulations relating to the user of limited trade plates? JOLYMP.

Answer.

The delivery of the new car is within reg 30, art. B (1) (iv) or (v) of the 1955 Registration and Licensing Regulations. A vehicle may be used under art. B (1) with or without a trailer attached thereto.

Having regard, however, to the special provisions of reg. 29, art. D (4), which are specifically not applied to limited licences, we do not think that the limited licence can be used as suggested. The use over that part of the journey from A's premises to the caravan owner's premises is not only a use for a purpose within reg. 30 (B) (1) (iv) or (v) but is also a use for an additional purpose which would be clearly within reg. 29, art. D (4) (*b*) (ii) and (iii) but is not within any of the provisions of reg. 30, art. B (1).

The point is not free from doubt, but our opinion is as stated above.